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9UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 ALTAIR INSTRUMENTS, INC., a) CASE NO. CV 17-880-R
11 California corporation,)
12 Plaintiff,) ORDER DENYING PLAINTIFF ALTAIR
13 v.) INSTRUMENTS, INC.'S MOTION FOR
14 DERMAMED SOLUTIONS, LLC, and) PARTIAL SUMMARY JUDGMENT RE
15 DOES 1 through 10,) VALIDITY OF THE '739 PATENT
16 Defendants.) _____)

18 Before the Court is Plaintiff's Motion for Partial Summary Judgment, which was filed on
19 June 22, 2017. (Dkt. No. 24). Having been thoroughly briefed by both parties, this Court took the
20 matter under submission on August 2, 2017.

21 Summary judgment is appropriate where there is no genuine issue of material fact and the
22 moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317
23 (1986). To meet its burden of production, "the moving party must either produce evidence
24 negating an essential element of the nonmoving party's claim or defense or show that the
25 nonmoving party does not have enough evidence of an essential element to carry its ultimate
26 burden of persuasion at trial." *Nissan Fire & Marine Ins. v. Fritz Cos.*, 210 F.3d 1099 (9th Cir.
27 2000). Once the moving party meets its initial burden of showing there is no genuine issue of
28 material fact, the opposing party has the burden of producing competent evidence and cannot rely

1 on mere allegations or denials in the pleadings. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio*
 2 *Corp.*, 475 U.S. 574 (1986). Where the record taken as a whole could not lead a rational trier of
 3 fact to find for the non-moving party, there is no genuine issue for trial. *Id.*

4 The instant litigation concerns Plaintiff's United States patent no. 6,241,739, entitled
 5 "Microdermabrasion Device and Method of Treating the Skin Surface" (the "'739 patent"). The
 6 '739 patent discloses a device and method for performing microdermabrasion. Plaintiff alleges
 7 that Defendant manufactures microdermabrasion devices, including the "MegaPeel Ex", (the
 8 "Accused Devices"), which infringe the '739 patent.

9 With its Motion, Plaintiff seeks partial summary judgment on the issue of validity of the
 10 '739 patent. A patent is presumed valid. *Schumer v. Lab. Computer Sys.*, 308 F.3d 1304, 1315
 11 (Fed. Cir. 2002). "To overcome this presumption of validity, the party challenging a patent must
 12 prove facts supporting a determination of invalidity by clear and convincing evidence." *Id.*

13 The Court denies Plaintiff's Motion because it is premature. Here, Plaintiff filed its
 14 Motion more than four months before the close of discovery, which is set for October 30, 2017.
 15 As Plaintiff itself points out, while Plaintiff, as the moving party, bears the initial responsibility of
 16 informing this Court of the basis for its Motion, the burden falls on Defendant, as the party
 17 challenging the validity of the patent, to prove by clear and convincing evidence that the '739
 18 patent is invalid. Given this, it would be unjust for the Court to make a ruling on the merits before
 19 Defendant's investigation is even complete. Defendant states that its investigation into validity is
 20 still ongoing, and it has already identified three separate patents which it contends may be relevant
 21 prior art in determining the validity of the '739 patent.

22 The Court emphasizes that its decision is not based on the merits of the parties' arguments
 23 on this issue. Rather, the Court's decision is based only on its determination that Plaintiff has
 24 prematurely filed its Motion.

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1 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment is DENIED.
2 (Dkt. No. 24).

3 Dated: August 8, 2017.



6 MANUEL L. REAL
7 UNITED STATES DISTRICT JUDGE

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